

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGELA KAY McCREERY,

Plaintiff,

Case No. 05-CV-74652

vs.

HON. GEORGE CARAM STEEH

GOPAL SINGHAL, et al.

Defendants.

_____/

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DISMISSING COMPLAINT

This matter is one in which *pro se* plaintiff Angela McCreery, an inmate with the Michigan Department of Corrections, was granted *in forma pauperis* status for the filing of her complaint, in which she claims deliberate indifference to medical needs in the treatment of a broken foot.

As provided by 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1(b)(2), the case was assigned to Magistrate Judge Capel for pre-trial proceedings. Before the court is his Report and Recommendation, filed March 16, 2006, recommending the dismissal of plaintiff's complaint without prejudice for failure to demonstrate exhaustion of administrative remedies.

In Magistrate Capel's Report and Recommendation, the conclusion section clearly stated that objections to his report and recommendation were to be filed within 10 days of service of a copy thereof. 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b). Plaintiff has filed no objections to the report and recommendation to date. The failure to file such objections waives a party's right to further appeal. Howard v. Secretary of

Health & Human Services, 932 F.2d 505 (6th Cir. 1991). Also see U.S. v. Campbell, 261 F.3d 628, 631-32 (6th Cir. 2001) (citing Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), *aff'd* 474 U.S. 140 (1985)).

The court has considered the plaintiff's complaint, the pleadings on the motion to dismiss, and the report and recommendation of the magistrate in this matter. The court is in agreement that the PLRA and relevant Sixth Circuit case law mandates this court's dismissal of this action, for failure to allege exhaustion of administrative remedies.

Baxter v. Rose, 305 F.3d 486, 488-89 (6th Cir. 2002), Jones Bey v. Johnson, 407 F.3d 801, 805-06 (6th Cir. 2004)(Rehearing en banc denied October 12, 2005).

Accordingly, for the reasons given above as well as those stated in the report and recommendation of Magistrate Judge Capel, plaintiff's complaint is hereby DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: April 10, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on April 10, 2006, by electronic and/or ordinary mail.

S/Josephine Chaffee
Secretary/Deputy Clerk